



State & Federal Contractors Water Agency

1121 L Street, Suite 802, Sacramento, CA 95814

Delta Stewardship Council
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Sacramento, CA 95814

Dear Chairman Isenberg and Council Members:

The State and Federal Contractors Water Agency (SFCWA)* appreciates the opportunity to comment on the 3rd/final draft of the Interim Plan (IP). Overall, the document has continued to improve in the drafting process. Still, as we will note below, there remain some key points that continue to suffer from a lack of clarity, as well as statements we disagree with.

Because the IP was initially described as and remains primarily a “framework” document for developing recommendations rather than actually putting forth “early actions, projects and programs”, we are disappointed that an opportunity for the Council to more quickly exert influence to promote actions that will further the co-equal goals has been delayed. Nevertheless, we do appreciate the added commitment to make these recommendations before the end of the calendar year. It is important, which seems to be the intent, to promote activities beyond those identified in the legislation. Consequently, the solicitation and review process added to this draft is welcomed.

We were particularly frustrated, however, by the addition of language on page 2 of the red line/strike-out version that perpetuates misunderstanding of California’s water rights system. The excerpt from the Delta Vision Strategic Plan (DVSP) should be stricken. The apparent point being made does not require this language and the lack of sophistication evidenced by repeating such statements alongside caveats that essentially refute them does a disservice to the Council and the public.

As in our previous comment letters, we provide more substantive comments followed by editorial suggestions. Please note that the line and pagination references are based on the redline/strike-out version of the document.

SUBSTANTIVE COMMENTS AND CONCERNS

* SFCWA is a Joint Powers Authority of water contractors that receive water from the State Water Project and the Central Valley Project. Together, SFCWA members serve over 25 million Californians and provide water to irrigate more than 3 million acres of the nation's most productive agricultural lands. SFCWA's mission is to assist its member agencies in assuring a sufficient, reliable and high quality water supply for their customers and maximize the efficient operation and integration of the State Water Project and federal Central Valley Project.

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Page (P) ii, line 37: mention is made here, and repeated later in the document, of the Council having defined its role in relationship to the Bay Delta Conservation Plan (BDCP) process. It is unclear what the Council's determination of its role actually is. If, as we assume, it is "defined" by the May 10, 2010 letter from Mr. Grindstaff to the BDCP, it would be beneficial to reference that letter (perhaps in a footnote). If there is more to the Council's position vis-à-vis its "role in relationship" to the BDCP, it needs further clarification.

P v, lines 20-21: The reference to "urgency criteria described in the legislative history of SBX7 1" should be clarified by specifically identifying those criteria in the document.

P vi, lines 4-6: We reiterate our concerns about the lack of clarity as to the expected "use" of "Delta water flows" as an "analytical tool for Council action". We do not understand how or why the Council will be making "early considerations of Delta water flow" when the State Water Resources Control Board (Board) is the proper venue for such review and determination. While certainly the Council should be aware of activity related to flow management and regulation in and related to the Delta, this language is still too vague as to the Council's intent with respect to its "consideration" of "Delta water flows".

P vi, lines 7-14: Although the BDCP has not been finalized, it can still help inform the discussion of potential actions under the IP and certainly should be referenced here as part of the planning that will inform the Delta Plan (DP). Indeed, assuming it satisfies the legislative requirements to do so, the BDCP will be a key driver of ecosystem restoration activities in the Delta Plan. Consequently, a reference to the BDCP here is conspicuously absent and should be rectified.

P 2, lines 22-35: To state that "available water appears to be overpromised" misleads the reader. California's water rights system doesn't "promise" water. It regulates, along with water quality requirements imposed by the Board, the distribution of water based on what nature provides and the legal framework embedded in the water rights system, including Article X, Section II of the California Constitution. A water right does not confer a guarantee that water will always be available; rather the priority system regulates shortages. In addition, with regard to the export projects, their contracts are constrained by hydrology and limitations on operations imposed through biological opinions.

It is not the state's system of regulating water rights that is inadequate; it is the Board's ability to enforce water rights that is inadequate, along with information deficiencies. We suggest the following substitute sentence: "Additionally, nature often provides less water than is necessary to meet all demands at all times and the lack of reliable real-time information and enforcement capability compromises efficient water rights administration."

The excerpt from the DVSP should be removed. It perpetuates misunderstanding of how water rights work in California with no countervailing benefit to its inclusion in the document. Putting a period after "challenging" at the end of line 24 and appending that sentence to the end of the previous paragraph makes the same point well, without regurgitating assertions that reflect a lack of sophistication in understanding and are counterproductive to the process.

When Delta Vision included this in its report, the coequal goals had not been established in law. Nor had the policy to "reduce reliance on the Delta" to meet "future water supply needs". Those legislative

mandates make the “information” provided in lines 26-35 even less probative for any purpose of the IP or DP.

P 5, lines 22-23: the following clause should be changed as suggested here: “~~...the historically high level of water exports through the major south Delta pumps in the last two decades,~~” – use of “historically high” implies some sort of immediate impact to the reader but then the timeframe is stated as two decades. This doesn’t make sense. There is no question water exports have altered the Delta system, just as numerous other activities have. The original language may be read by some to imply that the level of water exports over the last two decades has been inconsistent with expectations of public policy, when in fact they were a manifestation of same, or somehow violative of some regulatory standard, which is not the case.

P 7, line 15-16: strike the language after “intakes” because it is too simplistic and misleading. There are other triggers related to hydrology and turbidity as well. The additional “detail” does not add to the point being made about regulatory constraints.

P 10, line 24: the added reference to “funding recommendations” apparently attributed to the Act is confusing because the legislation was silent on financing implementation of the Delta Plan. If the intent is to reference the “funding recommendations” in the DVSP which must be considered by the Council, but not necessarily adopted, then that should be clearly stated.

P 11, lines 17-19: Delete all the language after “Act.” Calling out only select reasonable and prudent actions (RPAs) promotes a too narrow perspective that tends to ignore many other critical factors impacting the Delta system. Furthermore, the biological opinions and the RPAs have been called into question by the federal District Court. As in other instances, this language adds nothing to the point being made but does insert unnecessary confusion and controversy. If deletion is not acceptable, then we suggest inserting “theoretically” between “to” and “provide increased levels of protection” since to date this strategy has met with little success.

P A-15, lines 4 and 12-13: We reiterate our disagreement with the Council’s interpretation as put forth here and incorporate by reference our July 28, 2010 letter to the Council regarding these jurisdictional and standard of review issues related to the BDCP.

EDITORIAL COMMENTS AND SUGGESTIONS

P iii, lines 35-37: This sentence needs to be reworked to convey its intent. As written it is garbled and confusing. The idea of “informing” the Council with “advice” doesn’t really make sense in the context of the IP.

P iv, line 11: replace “make” with “take”.

P iv, line 29: add “to” between “related” and “and”.

P viii, line 19: substitute “developed” for “adopted”.

P 7, line 7: replace “the” with “a”.

P 7, line 8: replace “it” with “the legislative action approving the proposal”.

P 9, lines 16-18: Strike “Although” and begin the paragraph with “The”. Put a period after “1988”. Strike “and” and begin the next sentence with “While some....”

P 10, line 23: insert “a” between “at” and “time”.

P 11, line 40: replace “the” with “its” before “Strategic Workplan”.

P 12, lines 2-3: change the sentence to read “...a detailed evaluation of methods for and effects analyses of proposed ecosystem restoration activities, including development of methods to conduct effects analyses improving conveyance facilities.”

P 27, line 1: delete “of”.

P 53, line 1: To ensure clarity and provide the total context, insert “, but not necessarily adopted,” between “considered” and “in”.

P 56, line 11: change “addition” to “additional”.

P 56, line 12: add “an” between “includes” and “estimated” and replace “from” with “of”.

P 56, line 13: add “a” between “and” and “projected”.

P A-14, line 9: It should be Paragraph 18 not 19.

P B-1, line 18: delete extra space in “o f”.

P B-6, lines 3, 9, 15, 20, 26, 31, 37, and line 6 on P B-7: Most proposed actions will not implicate all eight policy objectives. We suggest adding a fifth category of “N/A” to the other four options to choose from.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Byron M. Buck
Executive Director